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September 27, 1995

DOCKET FILE COPY ORIGINAL

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

VIA: FACSIMILE AND
FEDERAL EXPRESS

RE: Implementation of Sections of Television Consumer Protection Act of 1992: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration/Small Cable Business Association Opposition to Petitions for Reconsideration of the Eleventh Recon Order

Dear Mr. Caton:

Enclosed for filing are the original and 14 copies of the above-captioned document. We have also delivered a copy by fax. We have also enclosed a copy with a pre-addressed Federal Express envelope and request that a file-stamped copy be returned to us.

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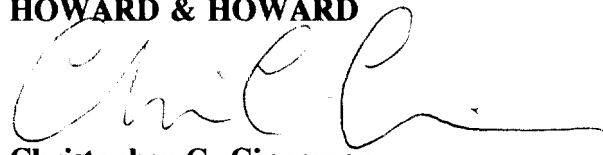
Mr. William F. Caton
September 27, 1995
Page -2-

The prompt dissemination of this information to the Commissioners and appropriate staff members is greatly appreciated.

If you have any questions or comments, please call us.

Very truly yours,

HOWARD & HOWARD



Christopher C. Cinnamon

Enclosures

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National Telephone Cooperative Association
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Mr. Donald W. Schanding, Georgia Municipal
Association

(via facsimile)

Small Cable Business Association
Eric E. Breisach

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SEP 28 1995

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of

Implementation of Sections of
Television Consumer Protection
Act of 1992: Rate Regulation

Sixth Report and Order and
Eleventh Order on Reconsideration

MM Docket Nos.: 92-266
& 93-215

DOCKET FILE COPY ORIGINAL

TO: The Commission

SMALL CABLE BUSINESS ASSOCIATION

OPPOSITION TO
PETITIONS FOR RECONSIDERATION OF THE ELEVENTH RECON ORDER

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September 27, 1995

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of

Implementation of Sections of
Television Consumer Protection
Act of 1992: Rate Regulation

Sixth Report and Order and
Eleventh Order on Reconsideration

MM Docket Nos.: 92-266
& 93-215

SMALL CABLE BUSINESS ASSOCIATION

OPPOSITION TO
PETITIONS FOR RECONSIDERATION OF THE ELEVENTH RECON ORDER

I. INTRODUCTION

The Small Cable Business Association ("SCBA"), through counsel, respectfully submits this Opposition to two Petitions for Reconsideration¹ of the *Eleventh Recon Order*.² Both petitions challenge critical provisions of the *Eleventh Recon Order*, provisions that provide long-awaited relief from administrative burdens and costs for SCBA members, other small cable operators, small local franchise authorities ("LFAs"), and subscribers.

NJBPU's Petition presents a narrow challenge, seeking reconsideration paragraph 74, which applies the new small cable company rules to pending rate cases. NJBPU argues that

¹ Only two entities have filed Petitions for Reconsideration, the New Jersey Board of Public Utilities ("NJBPU") and the Georgia Municipal Association ("GMA"). NJBPU also submitted a Motion for Stay of paragraph 74 of the *Eleventh Recon Order*. SCBA opposes the Motion for Stay in a separate filing.

² *Sixth Report and Order and Eleventh Order on Reconsideration*, MM Docket Nos. 92-266 and 93-215, FCC 95-196, (released June 5, 1995) ("*Eleventh Recon Order*").

application of paragraph 74 to a single, specific rate case in New Jersey would create a wide range of regulatory mischief. SCBA believes the rate case in question has already settled rendering NJBPU's arguments moot. Even if the case were not yet settled, NJBPU's Petition only conjures a speculative parade of horrors concerning hypothetical outcomes of imagined rate cases. No new facts or issues of public interest are presented.

GMA's Petition presents a broader challenge, seeking reconsideration of all small operator relief crafted by the Commission in *Eleventh Recon Order*. The GMA Petition makes two principal arguments. First, GMA states that the Commission's calculations of a presumptively reasonable rate for small operators are wrong. Second, GMA contends that, rather than reduce administrative burdens, the *Eleventh Recon Order* "will increase dramatically" the burdens on local governments.

SCBA opposes these Petitions for three principal reasons. First, both Petitions fail to adequately justify reconsideration under the standards applied by the Commission. Both Petitions describe imaginary fears concerning the application of *Eleventh Recon Order*. None of NJBPU's or GMA's fears is probable. All of the petitioners legitimate concerns are addressed under existing regulations. Second, both Petitions attack the fundamental rationale underlying the *Eleventh Recon Order*, the reduction of administrative burdens on cable operators *and* local franchise authorities ("LFAs"). Both Petitions contend that the Commission has it backwards, *Eleventh Recon Order* will *increase* regulatory burdens on LFAs. The arguments for this position do not withstand scrutiny. Finally, SCBA believes that the Petitions really are about political control of the rate review process. Neither NJBPU nor GMA like that the *Eleventh Recon Order* might reduce their leverage over small operators in cost-of-service rate

reviews. The petitioners pose a political question inappropriate for this Docket. The Commission's action in *Eleventh Recon Order* is fully supported by the 1992 Cable Act.

Both Petitions fail to articulate any justifiable reasons for reconsideration of *Eleventh Recon Order*. Consequently, SCBA requests denial of the Petitions.

II. BACKGROUND

A. SCBA

SCBA and its members are keenly interested in the NJBPU and GMA Petitions. SCBA formed in the wake of the 1992 Cable Act and *Rate Order*.³ SCBA serves as a self-help group for small operators faced with an unprecedented labyrinth of regulations. SCBA membership now exceeds 340 operators. Many SCBA members operate systems with less than 1,000 subscribers. SCBA's principal missions have been to educate small operators and to work with the Commission to obtain relief for small cable businesses struggling under a regulatory structure that did not accommodate the unique circumstances of small cable.

Nearly all of SCBA's members benefitted from the long-awaited relief provided by *Eleventh Recon Order*. SCBA actively participated throughout the rulemaking process that led to the *Eleventh Recon Order*. As recognized repeatedly by the Commission, the administrative burdens and costs of cable rate regulation under the 1992 Cable Act have disproportionately affected small cable operators. Because NJBPU and GMA seek regression to a regulatory regime from which SCBA has diligently sought relief, SCBA must oppose the Petitions.

³ *Report and Order and Further Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 93-177, 8 FCC RCD 5631 (released May 3, 1993) ("*Rate Order*").

B. *Eleventh Recon Order* reflects the continuing efforts of the Commission to provide regulatory relief to small cable operators.

In evaluating the Petitions, it is important to place the *Eleventh Recon Order* in the context of continuing Commission to efforts address the concerns of small cable operators.⁴ Both Petitions directly conflict with the 1992 Cable Act and Commission action. Both Petitions expressly seek to *increase* burdens on small cable operators.

Small system relief began with *Rate Order*. In that Order, the Commission permitted small systems simply to certify to LFAs that basic service and equipment rates were reasonable.⁵ Small systems were also exempt from rate regulation for over six months while the Commission considered additional proposals.⁶ This consideration resulted in additional small operator relief in *Second Recon Order*.⁷ *Second Recon Order* expanded the range of small operators entitled to relief and provided for transition relief from the 17% rate rollback.⁸

More small operator relief followed. *Fifth Recon Order* provided small operators a 60 day grace period following the onset of regulation to file rate justifications and to notify subscribers of new rates.⁹ Additionally, the Commission granted small operators 90 days from

⁴The 1992 Cable Act directs the Commission to reduce regulatory burdens and the cost of compliance for small systems. 47 U.S.C. §§ 543, 543(i).

⁵*Rate Order* at ¶ 462; 47 C.F.R. § 76.934(a).

⁶*Memorandum Opinion and Order*, MM Docket No. 92-266, FCC 93-389, 8 FCC Rcd 5585 (1993).

⁷*Second Reconsideration, Fourth Report and Order and Fifth Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) ("*Second Recon Order*").

⁸*Second Recon Order* at ¶¶ 117-122.

⁹*Fifth Order on Reconsideration and Further Notice of Proposed Rulemaking*, MM Dockets Nos. 93-215 and 93-266, 9 FCC Rcd 5327 (1994) at ¶ 7 ("*Fifth Recon Order*").

the initial date of regulation to restructure rates.¹⁰ Later, *Sixth Recon Order* provided small operators a means to recover the costs of headend equipment associated with adding channels and improving service.¹¹ The Commission also acted to relieve small operators from bearing a disproportionate burden of cable service regulatory fees by basing the fees on an exact subscriber count.¹² The Commission expressly directed all of these efforts at alleviating the disproportionate burden of regulation on small cable operators. The 1992 Cable Act mandates this effort.

Small operator relief continued in *Eighth Recon Order*.¹³ In that order, the Commission permitted small systems and systems owned by small MSOs to negotiate alternative rate regulation agreements with certified LFAs.¹⁴ The Commission concluded that alternative rate regulation agreements provided an opportunity to achieve reasonable rates while reducing administrative burdens and costs for both small systems and LFAs. Soon after *Eight Recon Order*, the Commission permitted independent small systems that elected transition relief to

¹⁰*Id.*

¹¹*Sixth Order on Reconsideration, Fifth Report and Order, and Seventh Notice of Proposed Rulemaking*, MM Docket Nos. 92-266 and 93-215, FCC 94-286 (date) ("*Sixth Recon Order*") at ¶¶ 91-94.

¹²*Report and Order*, MD Docket No. 94-19, FCC 94-140, 9 FCC Rcd 533, 5368 (1994).

¹³*Eighth Order on Reconsideration*, MM Docket Nos. 92-266 and 93-215, FCC 94-42 (March 17, 1995) ("*Eighth Recon Order*").

¹⁴*Eighth Recon Order* at ¶¶ 25-27.

recover inflation increases from September 30, 1992.¹⁵ Again, the Commission expressly provided this relief to alleviate financial burdens on small operators.¹⁶

This Commission action shows a consistent theme and an increasing momentum toward reducing regulatory burdens on small cable. This has continued with *Eleventh Recon Order*, key provisions of which NJBPU and GMA seek to block.

C. The *Eleventh Recon Order* addresses specific, demonstrated regulatory burdens on small cable operators.

The Commission expressly directed *Eleventh Recon Order* toward the complaints of small cable operators. "In crafting the relief we adopt today, we have attempted to alleviate both the substantive and the procedural burdens of which smaller cable companies complain."¹⁷ Specific burdens considered by the Commission include:

1. Rate regulation did not adequately take into account the higher costs of doing business for smaller cable companies.¹⁸
2. Rate regulation did not adequately take into account the higher cost of capital for smaller cable companies.¹⁹
3. Compliance with rate regulation imposed an inordinate hardship upon smaller cable companies in terms of labor and other resources. For example, preparation of a "streamlined" cost-of-service filing alone absorbed 60 hours.²⁰

¹⁵*Ninth Order on Reconsideration*, MM Docket No. 92-266, FCC 95-43 (released February 6, 1995) ("*Ninth Recon Order*") at ¶¶ 11-15.

¹⁶*Ninth Recon Order* at ¶ 10.

¹⁷*Eleventh Recon Order* at ¶ 55.

¹⁸*Id.*

¹⁹*Id.*

²⁰*Id.* at ¶¶ 55-56.

4. Rate regulation imposed burdens on LFAs that must review cost-of-service filings. Many small LFAs exhausted scarce resources to review complicated cost-of-service filings.²¹
5. The need existed for the Commission to guard against burdensome and unnecessary data requests by LFAs.²²
6. The burdens identified by small cable companies include those imposed by ongoing rate reviews.²³

The record gave the Commission "little reason to question those commenters who contend that our existing rules significantly burdened small systems."²⁴ Consequently, the Commission calculated a presumptively reasonable rate for small cable companies of \$1.24/channel, so long as the operator can cost justify this rate. The Commission also fashioned a procedural framework for reviewing Form 1230 cost-of-service filings that aims to reduce administrative burdens on *all* participants in the process, operators, LFAs, the Commission and other interested parties. Finally, the Commission directed in paragraph 74 that LFAs permit qualifying small cable companies to justify rates in all pending rate reviews under the rules announced in the *Eleventh Recon Order*.

Now NJBPU seeks reconsideration of paragraph 74; GMA seeks reconsideration of the entire *Eleventh Recon Order*. These petitions run 180° against the Commission's continuing efforts to evaluate and respond to the unique circumstances of small cable. Moreover, both entities are agencies enjoying at least adequate funding. Neither NJBPU nor GMA has claimed in any rulemaking to date that it lacked resources to regulate basic cable and equipment rates.

²¹*Id.* at ¶ 56.

²²*Id.* at ¶ 66.

²³*Id.* at ¶ 74.

²⁴*Id.*

These factors should guide the Commission's analysis of the moves by NJBPU and GMA to block the Commission's carefully crafted and long-awaited relief for small cable companies and small LFAs nationwide.

III. COMMISSION STANDARDS FOR EVALUATING PETITIONS FOR RECONSIDERATION.

The Commission evaluates petitions for reconsideration under the standards articulated in 47 C.F.R. § 1.429(b). It states:

A petition for reconsideration which relies on facts which have not previously been presented to the Commission will be granted only under the following circumstances:

- (1) The facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission;
- (2) The facts relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts in question prior to such opportunity; or
- (3) The Commission determines that consideration of the facts relied on is required in the public interest.

Under these standards, both Petitions fail to present any new facts or issues of public interest that meet these standards. SCBA analyzes the Petitions in sequence below, beginning with NJBPU's Petitions.

IV. THE NJBPU PETITION FAILS TO JUSTIFY RECONSIDERATION UNDER APPLICABLE COMMISSION STANDARDS.

NJBPU presents several arguments in an attempt to support reconsideration of paragraph 74. As discussed in this section, none of these arguments warrant reconsideration. NJBPU bases all of its arguments on what it insists might happen in one New Jersey rate case, the

Service Electric Case.²⁵ Consequently, an examination of that case is helpful.

A. The Service Electric case.

NJBPU's arguments for reconsideration spring from the Service Electric case. According to the NJBPU Petition:

Application of the Commission's new definition of a small system to pending matters will allow at least one cable operator in New Jersey to have an unfair advantage with respect to the setting of rates, because the cable operator as of the effective date of the FCC's rules promulgated under the Commission's Order, will now be able to increase its rate for all channels from \$23.00 per month to a presumed reasonable charge of \$74.40 per month, or whatever lesser amount the cable operator calculates pursuant to the Commission's new Form 1230, unless the Board meets the burden of showing that the rate calculated is unreasonable.²⁶

NJBPU appears to argue that because it did not resolve the one isolated rate case by June 5, 1995, regulatory catastrophe will result absent reconsideration of paragraph 74. Service Electric offers a large channel selection on basic. From this, NJBPU raises the specter of an unfettered rate increase to \$74.40. SCBA recognizes that NJBPU is principally responsible for ensuring that basic cable rates in New Jersey remain at reasonable levels. Nonetheless, NJBPU's arguments that the *potential* application of the paragraph 74 to the Service Electric case²⁷ are either entirely speculative or unfounded and fail to meet the standards for reconsideration.

The speculative nature of NJBPU's arguments is best demonstrated by one observation: the Service Electric case has settled. Based upon conversations with officers of Service Electric, SCBA believes a settlement was reached within 7 days before this Opposition was filed. This fact undercuts all the assertions in the Petition and provides grounds for denial. Nonetheless,

²⁵*Service Electric Cable TV of Hunderton*, BPU Docket No. CR 94060241 (the "Service Electric case").

²⁶NJBPU Petition at 1-2.

²⁷The NJBPU Petition references no other cases where this concern arises.

SCBA will respond thoroughly to the arguments raised by NJBPU.

B. The NJBPU Petition fails to introduce any facts or changed circumstances warranting reconsideration.

The NJBPU Petition seeks reconsideration based on the following five "facts":

1. The *Eleventh Recon Order* "may result in the retroactive redefinition of Service Electric as a 'small system' for the entire period during which its disputed rates have been in effect".²⁸
2. Service Electric and NJBPU Staff had reached a "tentative settlement", but, in response to the *Eleventh Recon Order*, Service Electric chose instead to justify rates with a Form 1230.²⁹
3. Because of the \$1.24/channel presumptively reasonable rate, Service Electric could now raise rates to \$74.40 per month.³⁰
4. Shifting the burden of proof to the LFA for rates up to \$1.24/channel will "necessitate the use of Board and State resources not usually required, through the presentation at hearing of expert testimony establishing why Form 1230 derives an unreasonable rate."³¹
5. The NJBPU's ability to determine Service Electric's "true costs" will be "severely constrained" and require the commitment of "additional resources".³²

SCBA responds to these assertions of "fact" in sequence.

1. Service Electric's status as a small cable company remains uncertain.

NJBPU asserts that Service Electric has sought to proceed under the new small cable company rules. As the NJBPU petition admits, Service Electric's status remains an unresolved question of fact. This does not constitute a fact not before the Commission justifying

²⁸NJBPU Petition at 4.

²⁹*Id.* at 5.

³⁰*Id.*

³¹*Id.* at 6.

³²*Id.*

reconsideration. To the contrary, the Commission anticipated such questions and placed the burden of establishing small cable company status on the operator.³³ If Service Electric were to establish small cable company status, this would represent the result intended by the Commission, not a new "fact" warranting reconsideration.

2. Any effect of paragraph 74 on a "tentative settlement" is either speculative or intended by the Commission.

Any "tentative settlement" influenced by paragraph 74 is not a changed circumstance that warrants reconsideration. The Service Electric case commenced on July 14, 1994. The NJBPU had received ample notice that the Commission was considering redefining small cable system and providing additional relief to small operators.³⁴ The Commission sought comment on these proposed changes. NJBPU had ample opportunity to bring the facts of the Service Electric case or other pending cases to the Commission. It chose not to do so. Moreover, the NJBPU took over a year to conduct the cost-of-service review, more than six months past the deadline for an LFA to complete a cost-of-service review. NJBPU was entitled to issue a rate order 180 days after July 14, 1994 based on the best information then available to it.³⁵ NJBPU's own scheduling choice is not a new "fact" to introduce into the rulemaking. Furthermore, the Commission was obviously aware that its order would effect pending rate cases at all stages. It directed this result in paragraph 74. Consequently, the Service Electric case does not present any new facts, changed circumstances or a result not expressly anticipated by the Commission.

³³*Eleventh Order on Recon* at ¶ 74.

³⁴*Second Recon Order*, 9 FCC Rcd at 4223; *Fifth Notice of Proposed Rulemaking*, 9 FCC Rcd at 4247.

³⁵47 C.F.R. § 76.933(b).

3. The NJBPU fear of a \$74.40 rate for basic is entirely speculative.

The NJBPU Petition claims that Service Electric may attempt to justify a rate of \$74.40 for its 60 channel basic service. This has not occurred. Based on the NJBPU Petition, Service Electric was still attempting to justify a maximum permitted rate of \$26.31. Consequently, the specter of a \$75 basic rate is not realistic. Moreover, *Eleventh Order on Recon* fully reaffirms the requirement that Form 1230 rates must be cost based. Otherwise, such rates will be unreasonable. Small operators remain fully subject to all remedies for unreasonable rates. Again, the hypothetical rate scenario does not present any new facts.

4. Shifting the burden of proof to the LFA for rates up to \$1.24/channel will not "necessitate resources not usually required".

NJBPU argues that paragraph 74 will require it to expend additional resources to challenge a hypothetical rates from imaginary Form 1230s. Again, NJBPU presents a speculative fear. Upon closer scrutiny, it appears that NJBPU is already girding for the fight with New Jersey's small cable companies. Apparently, the NJBPU anticipates that small operators will seek unjustified rate increases. While the agency is certainly entitled to approach rate regulation with this bias, its bias is not grounds for reconsideration.

5. The NJBPU's ability to ascertain small operators' true costs will now be more simpler rather than being "severely constrained".

NJBPU argues that paragraph 74 will shackle its ability to determine Service Electric's "true costs." This is another speculative fear rather than a fact not previously presented to the Commission. This is not grounds for reconsideration under 47 CFR 1.429(b).

Upon closer scrutiny, the argument seems even more puzzling. The Service Electric case is over 14 months old. The NJBPU has used that time to obtain at least as much information

as it needed to reach a "tentative settlement".³⁶ It remains unclear what further information NJBPU will require to evaluate a Form 1230. While the NJBPU is certainly entitled to expend more or less resources in investigating any Form 1230 that Service Electric or other operator involved in a pending rate review may file, under *Eleventh Recon Order*, it need not do so. The Commission expressly encourages LFAs to limit their information requests to ease administrative burdens on operators *and* LFAs.³⁷

6. The NJBPU Petition fails to demonstrate that the public interest will be served by reconsideration of paragraph 74.

The Commission articulated its analysis of the public interest in *Eleventh Recon Order*. The Commission has stated, and SCBA agrees, that the public interest is best served by a financially healthy small cable industry.

Our analysis of cost data, when combined with our understanding of the many unique challenges facing small cable companies, leads us to conclude that a simplified approach will best serve a segment of the cable industry that needs assistance in coping with rate regulation in order to serve subscribers better and grow its business. In addition, this approach should facilitate regulation of cable rates by small local franchising authorities who wish to have a procedure for doing so that is simpler than existing forms of regulation.³⁸

NJBPU disagrees with the Commission. It argues that the public is best served if Service Electric remains saddled with the administrative burdens that commenters described as "unduly burdensome" and an "inordinate hardship".³⁹ The NJBPU contends that the public interest is

³⁶SCBA believes the case has already settled.

³⁷*Eleventh Recon Order* at ¶ 65.

³⁸*Eleventh Recon Order* at ¶ 3.

³⁹*Id.* at ¶ 55. The Commission stated that the record gave it no reason to doubt these comments. *Id.* at ¶ 74.

served if New Jersey does not have to expend "resources not usually required, through the presentation at hearing of expert testimony establishing why Form 1230 derives an unreasonable rate under the facts and circumstances involved."⁴⁰

This argument is a *non-sequitur*. The shift in the burden of proof under the *Eleventh Recon Order* does not mandate the expending of additional LFA resources and investments in expert testimony. To the contrary, the new rules are expressly designed to *reduce* administrative burdens on small LFAs and cable operators. Concerning the Service Electric case, the NJBPU admits that it had conducted sufficient discovery to reach a tentative settlement. If it later contests a Form 1230 as unreasonable, it already possesses the necessary evidence to support a challenge. Moreover, the NJBPU cannot seriously contend that dire consequences to the public interest will result if it chooses to enlist rate regulation expertise in the Service Electric case. That remains the choice of the NJBPU, not a mandate of the *Eleventh Recon Order*.

The NJBPU public interest arguments have demonstrated only what the Commission intended: the *Eleventh Recon Order*, including paragraph 74, will reduce administrative burdens on small cable companies and small LFA's. The NJBPU does not like these changes. It loses some leverage over small operators. But compared to small cable companies and many small cities, towns, and villages, NJBPU is big, well-staffed and well-funded. Based upon comments submitted to the Commission, it was just such entities that imposed the burdens on small cable operators that led to the complaints resulting in the *Eleventh Recon Order*. If the past predicts the future, the NJBPU will find ample resources to regulate basic cable and obtain

⁴⁰Stay Request at 6.

the information is needs to ensure reasonable rates under Commission regulations. The new rules merely modulate such efforts.

The NJBPU Petition fails to present and facts or circumstances that have not been considered by the Commission. Moreover, the Petition fails to demonstrate any public interest justification for reconsideration of paragraph 74 or the *Eleventh Recon Order*. Consequently, NJBPU does not provide credible grounds for reconsideration under 47 CFR 1.429. It petition should be denied.

V. GMA FAILS TO JUSTIFY ITS PETITION FOR RECONSIDERATION UNDER APPLICABLE COMMISSION STANDARDS.

A. GMA seeks reconsideration because the *Sixth Recon Order* threatens rate consultant revenue.

The GMA states that it is a "non-profit corporation with the principal objective of improving the quality of municipal government in Georgia."⁴¹ This is not the whole story. GMA also provides cable rate regulation services to Georgia municipalities for a fee.

GMA's Rate Regulation Division is headed by Mr. Schanding who signed the transmittal letter accompanying GMA's Petition. This suggests that GMA might have an interest in protecting a revenue source made possible by complicated cost-of-service rules. It might have been more appropriate for one or more Georgia municipalities to step forward and raise any objections, but none did. GMA's petition should be given no more consideration than if it had been filed by a rate consultant or municipal law firm, the members of whom stand to benefit from continued employment.

⁴¹GMA Petition at 1.

B. GMA's claims that the Commission erred in computing the \$1.24 cap are both inaccurate and speculative.

GMA states that it "believes" the Commission's "reasoning is flawed" because it was derived from Form 1220s as filed and "[i]f the FCC were to review these forms, it would *probably* find that corrections should be made to the operators' calculations in a *large percentage* of cases."⁴² GMA's argument fails to present any facts to support reconsideration.

GMA attempts to support its petitions with two "for examples":

1. Georgia Operator Filings. Apparently, based on its own review of several Georgia operator filings, they are inappropriate because they include a "high value of intangible assets in the rate base...."⁴³
2. Commission Decisions To Date. The Commission has decided a limited number of cost-of-service decisions to date. GMA contends that "in each of the nine Orders which have been adopted by the FCC in cost-of-service cases [footnote omitted], the FCC found that the cable operator included rate base and expense items which it should not have included. In other words, the FCC determined in every case that the permitted rates as calculated by the operators were not correct."⁴⁴

The assertions that the Commission has found substantial and relevant "mistakes" in the cost-of-service data base is incorrect. Of the nine orders cited by GMA, six required changes in allocation methods, two required reductions in rates of return, 5 required changes in the recovery of prior years' net operating losses, two required changes to the tax gross-up of the

⁴²*Id.* at 2 (emphasis added).

⁴³*Id.*

⁴⁴*Id.*

permitted return, and two required minor revenue offsets for home shopping commissions. Four of the decisions required changes in depreciable lives. None of these changes is relevant to the *Eleventh Recon Order*.

The claimed errors related to adjustments to ratebase and expenses due to the Commission's interim cost-of-service presumptions. The Commission has expressly removed these presumptions from small operator cost of service filings.⁴⁵ Consequently, the "flaws" that GMA contends existed in the Commission's analysis were present are not relevant to small operator calculations. The Commission considered the interim presumptions and rejected their application to Form 1230 rate justifications.

C. GMA's "experience" with the *Eleventh Recon Order* demonstrates the Commission's intended results are being achieved.

GMA offers examples of its "experience" with the *Eleventh Recon Order*.⁴⁶ Apparently, some small operators in Georgia are now asserting their entitlement to charge compensatory rates. While lower cable rates may be politically attractive for GMA and its constituency, the 1992 Cable Act and the 5th Amendment mandate compensatory rates. This is precisely the reason that the Commission issued the *Eleventh Recon Order*. GMA raises no new facts warranting reconsideration. Rather it identifies examples of the Commission's intended results.

D. The GMA Petition fails to demonstrate that the public interest will be served by reconsideration of paragraph 74.

GMA presents a public interest argument similar to NJBPU: the *Eleventh Recon Order* will *increase* regulatory burdens on LFAs.⁴⁷ As indicated above, this argument is speculative

⁴⁵*Eleventh Recon Order* at ¶¶ 58 - 60.

⁴⁶GMA Petition at 3.

⁴⁷See analysis above at 13-15.

and represents an unfounded fear that the new rules will fail to achieve their intended result, efficient cost-of-service reviews for small operators and small LFA's. The record in this docket contained ample evidence of the administrative burdens and costs of the previous cost-of-service rules for small operators. GMA merely offers speculation.

As with NJBPU, SCBA suspects that GMA real contention is with the possible reduction in municipal leverage over small operators. As discussed above, this docket is the inappropriate forum for those concerns.⁴⁸

VI. CONCLUSION AND REQUESTED RELIEF.

Both the NJBPU and GMA Petitions fail to meet the standards required for justifying reconsideration.

SCBA respectfully requests that the Commission deny each Petition.

Respectfully submitted,

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⁴⁸See analysis above at 15.